

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANNE BRYANT, ELLEN BERNFELD, AND  
GLORYVISION, LTD.,

Plaintiffs,

-against-

EUROPADISK, LTD., MEDIA RIGHT  
PRODUCTIONS, INC., VERY COOL MEDIA,  
INC., DOUGLAS MAXWELL, THE ORCHARD  
ENTERPRISES, INC., and RUSSELL J.  
PALLADINO,

Defendants.

-----X  
Thursday  
February 21, 2008  
10:15 a.m.

EXAMINATION BEFORE TRIAL of  
the Defendant, THE ORCHARD  
ENTERPRISES, INC., by and through  
its witness, JASON PASCAL, taken  
pursuant to Notice, held at the  
offices of Rockland & Orange  
Reporting, 445 Hamilton Avenue,  
White Plains, New York, on the  
21st day of February 2008, before  
a Notary Public of the State of  
New York.

ROCKLAND & ORANGE REPORTING  
20 South Main Street  
New City, New York 10956  
(845) 634-4200

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED

by and between the attorneys for the respective  
parties hereto that the sealing and filing of  
the within deposition be waived; that such  
deposition may be signed and sworn to before any  
officer authorized to administer an oath with  
the same force and effect as if signed and sworn  
to before a Justice of this Court.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to form, are reserved  
to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that  
the within examination and any corrections  
thereto may be signed before any Notary Public  
with the same force and effect as if signed and  
sworn to before this Court.

[2]

APPEARANCES:

MONAGHAN, MONAGHAN, LAMB &  
MARCHISIO, ESQS.

Attorneys for Plaintiffs  
28 West Grand Avenue  
Montvale, New Jersey 07645  
BY: MICHAEL KORIK, ESQ.

SHELOWITZ BRODER, LLP  
Attorneys for Defendants  
11 Penn Plaza, 5th Floor  
New York, New York 10001  
BY: MITCHELL C. SHELOWITZ, ESQ.

ALSO PRESENT: Darienne Grey

[4]

Jason Pascal  
JASON PASCAL, the Witness  
herein, on behalf of the Defendant,  
THE ORCHARD ENTERPRISES, INC., having  
first been duly sworn by Kathryn  
Lebeau, a Notary Public of the State  
of New York, was examined and  
testified as follows:

THE COURT REPORTER: Please state  
your name for the record.

THE WITNESS: Jason Pascal.

THE COURT REPORTER: Will you  
state your present address.

THE WITNESS: 100 Park Avenue,  
Second Floor, New York, New York  
10017.

(Prior to the Examination  
Before Trial, Plaintiffs' Exhibit  
Orchard-1, Product Representation  
Agreement, marked for  
identification; Plaintiffs'  
Exhibit Orchard-2, two-page fax  
dated 5/10/07, marked for  
identification; Plaintiffs'  
Exhibit Orchard-3, one-page

<p>[5]</p> <p>1 Jason Pascal</p> <p>2 iTunes screen shot regarding "Songs</p> <p>3 For Cats," marked for identification;</p> <p>4 Plaintiffs' Exhibit Orchard-4,</p> <p>5 one-page iTunes screen shot regarding</p> <p>6 "Songs For Dogs," marked for</p> <p>7 identification; Plaintiff's Exhibit</p> <p>8 Orchard-5, one-page Rhapsody screen</p> <p>9 shot regarding "Listen Free Songs For</p> <p>10 Cats," marked for identification;</p> <p>11 Plaintiffs' Exhibit Orchard-6,</p> <p>12 ten-page document entitled "The</p> <p>13 Orchard, Digital &amp; CD Distribution,"</p> <p>14 marked for identification;</p> <p>15 Plaintiffs' Exhibit Orchard-7,</p> <p>16 one-page letter dated 2/1/00, marked</p> <p>17 for identification; Plaintiffs'</p> <p>18 Exhibit Orchard-8, two-page document</p> <p>19 entitled "Songs For Cats - Inception</p> <p>20 to Q107 By Store," marked for</p> <p>21 identification; Plaintiffs' Exhibit</p> <p>22 Orchard-9, two-page document entitled</p> <p>23 "Songs For Dogs - Inception to Q107</p> <p>24 By Store," marked for identification;</p> <p>25 Plaintiffs' Exhibit Orchard-10,</p>	<p>[7]</p> <p>1 Jason Pascal</p> <p>2 Q. And what's your title at The</p> <p>3 Orchard?</p> <p>4 A. Vice President and Senior Counsel.</p> <p>5 Q. And your business address?</p> <p>6 A. 100 Park Avenue, Second Floor, New</p> <p>7 York, New York 10017.</p> <p>8 Q. Okay. And what's your educational</p> <p>9 background?</p> <p>10 A. I went to law school.</p> <p>11 Q. Where?</p> <p>12 A. Brooklyn.</p> <p>13 Q. Okay. And where did you go to</p> <p>14 undergrad?</p> <p>15 A. Michigan.</p> <p>16 Q. Okay. Did you graduate from</p> <p>17 Brooklyn Law?</p> <p>18 A. Yes.</p> <p>19 Q. When?</p> <p>20 A. Oh, what year? '95.</p> <p>21 Q. And did you work anywhere before</p> <p>22 The Orchard?</p> <p>23 A. Yes.</p> <p>24 Q. Where was that?</p> <p>25 A. I had my own practice for a time and</p>
<p>[6]</p> <p>1 Jason Pascal</p> <p>2 three-page document entitled "The</p> <p>3 Orchard, digital stores," marked</p> <p>4 for identification; Plaintiffs'</p> <p>5 Exhibit Orchard-11, one-page</p> <p>6 document entitled "The Orchard,</p> <p>7 cd stores," marked for</p> <p>8 identification; Plaintiffs'</p> <p>9 Exhibit Orchard-12, two-page</p> <p>10 document entitled "The Orchard,</p> <p>11 mobile partners," marked</p> <p>12 for identification; Plaintiffs'</p> <p>13 Exhibit Orchard-13, two-page</p> <p>14 document entitled "The Orchard,</p> <p>15 search results," marked for</p> <p>16 identification; Plaintiffs'</p> <p>17 Exhibit Orchard-14, one-page</p> <p>18 document entitled "The Orchard,</p> <p>19 release info," marked for</p> <p>20 identification.)</p> <p>21 EXAMINATION BY</p> <p>22 MR. KORIK:</p> <p>23 Q. Could you state and spell your name,</p> <p>24 again, for the record.</p> <p>25 A. Jason Pascal, J-A-S-O-N P-A-S-C-A-L.</p>	<p>[8]</p> <p>1 Jason Pascal</p> <p>2 I worked at an Internet music company for a</p> <p>3 period of time and major label before that.</p> <p>4 Q. Okay. Before your attendance here,</p> <p>5 today, what documents did you review?</p> <p>6 A. None.</p> <p>7 Q. Okay. Have you seen the Complaint</p> <p>8 in this case?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you review the</p> <p>11 Complaint before you came here, today?</p> <p>12 A. Not today.</p> <p>13 Q. Okay. How long have you been with</p> <p>14 The Orchard?</p> <p>15 A. Three years.</p> <p>16 Q. And did you replace someone or were</p> <p>17 you hired to fill a new position at The Orchard?</p> <p>18 MR. SHELOWITZ: Objection.</p> <p>19 You can answer if you</p> <p>20 understand the question.</p> <p>21 THE WITNESS: I replaced</p> <p>22 someone.</p> <p>23 Q. Okay. And what are your day-to-day</p> <p>24 responsibilities at The Orchard?</p> <p>25 A. I'm part of the Legal Department.</p>

<p style="text-align: right;">[9]</p> <p>1 Jason Pascal</p> <p>2 So, I handle all legal issues from top to</p> <p>3 bottom, and I'm, also, part of Senior</p> <p>4 Management. So, to the extent that there are</p> <p>5 needs for advice on the general direction of the</p> <p>6 company, I'm, sometimes, part of those</p> <p>7 decisions, as well.</p> <p>8 Q. When you say "Legal Department," how</p> <p>9 many attorneys are in the Legal Department?</p> <p>10 A. Two attorneys.</p> <p>11 Q. And how many staff?</p> <p>12 A. Two attorneys and two other staff</p> <p>13 members --</p> <p>14 Q. Okay.</p> <p>15 A. -- that are not attorneys.</p> <p>16 Q. And about, approximately, how many</p> <p>17 people are at The Orchard now?</p> <p>18 MR. SHELOWITZ: Objection</p> <p>19 to the form.</p> <p>20 Q. How many people are employed by</p> <p>21 The Orchard now?</p> <p>22 A. U.S.? Worldwide?</p> <p>23 Q. In the U.S.?</p> <p>24 A. Maybe, 60.</p> <p>25 Q. Okay. And were you with the company</p>	<p style="text-align: right;">[11]</p> <p>1 Jason Pascal</p> <p>2 company?</p> <p>3 A. Today?</p> <p>4 Q. Today?</p> <p>5 A. Yes.</p> <p>6 Q. Was the Orchard a publicly-held</p> <p>7 company in 1999?</p> <p>8 A. No.</p> <p>9 Q. When did the company go public?</p> <p>10 A. Via this merger in November. The</p> <p>11 competitor we absorbed was public. So, through</p> <p>12 that reverse merger, we are now public.</p> <p>13 Q. That was November 2007?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. In your own words, what would</p> <p>16 you say the nature of the business of The</p> <p>17 Orchard is?</p> <p>18 A. Distribution of digital content.</p> <p>19 Q. Now, when you say "distribution," I</p> <p>20 want to take you through an example,</p> <p>21 hypothetical example. I send you a CD. I'm a</p> <p>22 record label. What do you do with it?</p> <p>23 MR. SHELOWITZ: I'm going</p> <p>24 to object to it. I don't</p> <p>25 understand the question. It's</p>
<p style="text-align: right;">[10]</p> <p>1 Jason Pascal</p> <p>2 in 1999?</p> <p>3 A. No.</p> <p>4 Q. Would you know how many people were</p> <p>5 with the company in 1999 through 2000?</p> <p>6 A. Less than 10.</p> <p>7 Q. Okay. Now, is it a corporation?</p> <p>8 A. Yes.</p> <p>9 Q. Where is it incorporated?</p> <p>10 A. We've just gone through a merger.</p> <p>11 So, the way that it's set up, there's New York</p> <p>12 and Delaware corporations, both.</p> <p>13 Q. Okay. Who did you merge with?</p> <p>14 A. We absorbed a competitor of ours in</p> <p>15 the same space, company called "DMGI."</p> <p>16 Q. Okay. And who are the officers of</p> <p>17 The Orchard prior to the merger?</p> <p>18 A. What do you mean by "officers"?</p> <p>19 Q. How, exactly, is the company</p> <p>20 structured? Are there shareholders? Is it</p> <p>21 publicly held or was it a publicly-held company?</p> <p>22 MR. SHELOWITZ: I'm going</p> <p>23 to object to the form. There's</p> <p>24 three questions in there.</p> <p>25 Q. Is The Orchard a publicly-held</p>	<p style="text-align: right;">[12]</p> <p>1 Jason Pascal</p> <p>2 a hypothetical.</p> <p>3 Why don't you ask specific,</p> <p>4 concrete questions he can answer?</p> <p>5 Q. Okay. A record label sends you a</p> <p>6 CD. How do you distribute it?</p> <p>7 MR. SHELOWITZ: Objection</p> <p>8 to the form.</p> <p>9 Q. How is a CD distributed by</p> <p>10 The Orchard?</p> <p>11 MR. SHELOWITZ: Objection</p> <p>12 to the form.</p> <p>13 MR. KORIK: I don't see</p> <p>14 the problem with that question.</p> <p>15 MR. SHELOWITZ: Ask a</p> <p>16 question that he can answer and</p> <p>17 he will be happy to answer it.</p> <p>18 Q. CDs, physical media is sent to</p> <p>19 The Orchard. How does The Orchard --</p> <p>20 A. Not necessarily. That's not,</p> <p>21 necessarily, how it's done.</p> <p>22 Q. How does The Orchard obtain content</p> <p>23 to distribute?</p> <p>24 A. Through license agreements.</p> <p>25 Q. Okay. And who are those license</p>

<p style="text-align: right;">[13]</p> <p>1 Jason Pascal</p> <p>2 agreements with?</p> <p>3 A. Content owners or exclusive</p> <p>4 licensees.</p> <p>5 Q. Can you give me an example of</p> <p>6 content owner?</p> <p>7 A. I would rather not.</p> <p>8 Q. I'm not asking for a specific</p> <p>9 entity. I'm just looking for a record label, a</p> <p>10 band, a musician, something like that?</p> <p>11 A. Any. Any of the above.</p> <p>12 Q. So, could be any of the above?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What are some of the</p> <p>15 organizations through which The Orchard</p> <p>16 distributes its content?</p> <p>17 MR. SHELOWITZ: Objection</p> <p>18 to form. Foundation.</p> <p>19 Q. How does The Orchard distribute its</p> <p>20 content? Directly, to the consumer or via third</p> <p>21 parties?</p> <p>22 A. Third parties. We're a wholesaler.</p> <p>23 Q. Okay. Can you list some of the</p> <p>24 third parties through which The Orchard</p> <p>25 distributes its content?</p>	<p style="text-align: right;">[15]</p> <p>1 Jason Pascal</p> <p>2 iTunes?</p> <p>3 A. By check or wire.</p> <p>4 Q. If a track is download at the rate</p> <p>5 of .99 cents, how much of that goes to</p> <p>6 The Orchard?</p> <p>7 MR. SHELOWITZ: Objection</p> <p>8 to the form.</p> <p>9 THE WITNESS: I can't answer</p> <p>10 that. I can't answer that. It's</p> <p>11 confidential information about</p> <p>12 the deals that we have with our</p> <p>13 companies. I can't talk about</p> <p>14 that.</p> <p>15 MR. SHELOWITZ: More than that,</p> <p>16 it's such a hypothetical question.</p> <p>17 If you have specific things you</p> <p>18 want to identify, you can show him.</p> <p>19 If he can answer them, he will.</p> <p>20 MR. KORIK: Okay.</p> <p>21 MR. SHELOWITZ: If you're</p> <p>22 going to ask vague and ambiguous</p> <p>23 questions --</p> <p>24 MR. KORIK: There's, absolutely,</p> <p>25 nothing vague or ambiguous about</p>
<p style="text-align: right;">[14]</p> <p>1 Jason Pascal</p> <p>2 A. iTunes.</p> <p>3 Q. Any others?</p> <p>4 A. Many others. Hundreds. Hundreds of</p> <p>5 others.</p> <p>6 Q. Okay. Worldwide?</p> <p>7 A. Worldwide.</p> <p>8 Q. Okay. Some iTunes, a track costs</p> <p>9 .99 cents, do you agree, to download?</p> <p>10 MR. SHELOWITZ: He's not</p> <p>11 here to testify on behalf of</p> <p>12 iTunes. He's here to testify</p> <p>13 on behalf of The Orchard.</p> <p>14 Q. How does The Orchard get paid by</p> <p>15 iTunes?</p> <p>16 A. They send us --</p> <p>17 MR. SHELOWITZ: Objection</p> <p>18 to form.</p> <p>19 MR. KORIK: What is the</p> <p>20 problem with that question?</p> <p>21 MR. SHELOWITZ: There's</p> <p>22 no foundation.</p> <p>23 Q. Does The Orchard get paid by iTunes?</p> <p>24 A. Yes.</p> <p>25 Q. How does The Orchard get paid by</p>	<p style="text-align: right;">[16]</p> <p>1 Jason Pascal</p> <p>2 that question.</p> <p>3 MR. SHELOWITZ: Try to ask a</p> <p>4 question he can answer. He'll be</p> <p>5 more than happy to do so.</p> <p>6 MR. KORIK: Can you show him</p> <p>7 Exhibit Orchard-3.</p> <p>8 MR. SHELOWITZ: Pardon me?</p> <p>9 MR. KORIK: Can you show him</p> <p>10 Exhibit Orchard-3.</p> <p>11 Q. Can you take a look at that exhibit?</p> <p>12 A. Yes.</p> <p>13 Q. Now, can we agree that this is a</p> <p>14 screen shot from iTunes?</p> <p>15 A. No.</p> <p>16 Q. No. Okay.</p> <p>17 In your opinion, what are you</p> <p>18 looking at?</p> <p>19 MR. SHELOWITZ: Objection</p> <p>20 to the form. He is not here to</p> <p>21 give opinions on exhibits you're</p> <p>22 showing him.</p> <p>23 Why don't you identify the</p> <p>24 exhibit so we can understand what</p> <p>25 it is you're showing?</p>



<p style="text-align: right;">[17]</p> <p>1 Jason Pascal</p> <p>2 Q. What you're looking at is a screen</p> <p>3 shot from iTunes --</p> <p>4 A. Okay.</p> <p>5 Q. -- from the iTunes store for</p> <p>6 something called "Songs For Cats" --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- and it is copyright 2000,</p> <p>9 The Orchard?</p> <p>10 MR. SHELOWITZ: Objection.</p> <p>11 MR. KORIK: What's the</p> <p>12 objection?</p> <p>13 MR. SHELOWITZ: You're making</p> <p>14 a legal conclusion on a document</p> <p>15 you're just showing him for the</p> <p>16 first time.</p> <p>17 MR. KORIK: I'm reading the</p> <p>18 document. That's all I'm doing.</p> <p>19 MR. SHELOWITZ: I think we</p> <p>20 disagree on that point. You can</p> <p>21 say that, maybe, there's some</p> <p>22 kind of indication there, but --</p> <p>23 MR. KORIK: There's an</p> <p>24 indication that it says 2000,</p> <p>25 copyright, Orchard.</p>	<p style="text-align: right;">[19]</p> <p>1 Jason Pascal</p> <p>2 what's his opinion or understanding.</p> <p>3 Q. What is your understanding what the</p> <p>4 circle p symbol stands for?</p> <p>5 A. It denotes copyright in an asset in</p> <p>6 some form of expression.</p> <p>7 Q. Okay. Now, the document you're</p> <p>8 looking at, it purports to show Songs For Cats</p> <p>9 being sold by iTunes for \$9.99. Who sets the</p> <p>10 price of \$9.99?</p> <p>11 MR. SHELOWITZ: Objection</p> <p>12 to the form.</p> <p>13 Q. Did The Orchard set \$9.99 as a price</p> <p>14 for this product?</p> <p>15 A. No.</p> <p>16 Q. If a track is downloaded, Number 1</p> <p>17 on the Sweetie Gourmet, for .99 cents, does</p> <p>18 The Orchard receive a profit?</p> <p>19 MR. SHELOWITZ: Objection</p> <p>20 to the form.</p> <p>21 Q. If an end consumer downloads Track 1</p> <p>22 on the Sweetie Gourmet for .99 cents and pays</p> <p>23 for it, .99 cents goes to iTunes, a portion of</p> <p>24 that goes to The Orchard; true or false?</p> <p>25 A. True.</p>
<p style="text-align: right;">[18]</p> <p>1 Jason Pascal</p> <p>2 THE WITNESS: I see that it</p> <p>3 says 2000. I see that it says</p> <p>4 Orchard. I can't see what's in</p> <p>5 the circle. Therefore, I can't</p> <p>6 agree what you're saying.</p> <p>7 Q. Okay. Are you familiar with a</p> <p>8 circle p?</p> <p>9 A. I am.</p> <p>10 MR. SHELOWITZ: Objection</p> <p>11 to the form.</p> <p>12 MR. KORIK: What's the</p> <p>13 problem with that?</p> <p>14 MR. SHELOWITZ: It's vague</p> <p>15 and ambiguous and there's no</p> <p>16 foundation.</p> <p>17 Are you familiar with</p> <p>18 circle p? What do you mean</p> <p>19 by familiar?</p> <p>20 Q. Within the realm of copyright law,</p> <p>21 what does the circle p stand for? As an</p> <p>22 attorney?</p> <p>23 MR. SHELOWITZ: Objection.</p> <p>24 You can't ask him for legal</p> <p>25 opinions here. You can ask him</p>	<p style="text-align: right;">[20]</p> <p>1 Jason Pascal</p> <p>2 MR. SHELOWITZ: Objection.</p> <p>3 MR. KORIK: Now, what's</p> <p>4 your objection?</p> <p>5 MR. SHELOWITZ: Again, you've</p> <p>6 asked a hypothetical question and</p> <p>7 assume that The Orchard is getting</p> <p>8 something from the screen shot</p> <p>9 you're showing him and you haven't</p> <p>10 provided any kind of foundation.</p> <p>11 Q. Did The Orchard distribute Songs For</p> <p>12 Cats and Songs For Dogs?</p> <p>13 A. Yes, for a period of time.</p> <p>14 Q. Okay. And, during that period of</p> <p>15 time, did The Orchard distribute these products</p> <p>16 through iTunes?</p> <p>17 A. I can't say for sure without having</p> <p>18 looked at, you know, statements.</p> <p>19 MR. KORIK: Can you show</p> <p>20 the witness Orchard-8 and</p> <p>21 Orchard-9.</p> <p>22 Q. Can you identify these documents?</p> <p>23 A. They are statements that we provided</p> <p>24 of sales of these titles.</p> <p>25 Q. Now, looking at this statement,</p>

<p style="text-align: right;">[21]</p> <p>1 Jason Pascal</p> <p>2 specifically, Orchard-8, can you answer the</p> <p>3 question: Specifically, did iTunes sell Songs</p> <p>4 For Cats?</p> <p>5 A. It appears that they did.</p> <p>6 Q. Okay. So, did The Orchard generate</p> <p>7 revenue by selling Songs For Cats through</p> <p>8 iTunes?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Was a portion of that revenue</p> <p>11 passed onto a third party other than iTunes?</p> <p>12 A. Yes. The entity that gave us the</p> <p>13 rights.</p> <p>14 Q. Okay. And who is the entity that</p> <p>15 gave you those rights?</p> <p>16 A. I believe that the name of the</p> <p>17 company is Media Right, R-I-G-H-T.</p> <p>18 Q. Now, earlier, you said</p> <p>19 "distribution." Does distribution, also,</p> <p>20 include streaming?</p> <p>21 A. It can.</p> <p>22 Q. What forms of distribution does</p> <p>23 The Orchard have?</p> <p>24 A. We don't have any forms of</p> <p>25 distribution. We're not a retailer. We provide</p>	<p style="text-align: right;">[23]</p> <p>1 Jason Pascal</p> <p>2 different formats, also. So, there are</p> <p>3 hundreds. MP3 is a prominent example.</p> <p>4 Q. Okay. What about ring tones?</p> <p>5 A. Yes, but you said format, so.</p> <p>6 Q. Well, is a ring tone a format?</p> <p>7 A. Not as that term is understood in</p> <p>8 the industry.</p> <p>9 Q. Okay. So, what is a ring tone?</p> <p>10 A. A ring tone is a configuration, the</p> <p>11 same way a CD or a tape would be a</p> <p>12 configuration.</p> <p>13 Q. Okay. So, how many different</p> <p>14 configurations of musical -- of media does</p> <p>15 The Orchard sell?</p> <p>16 A. Several.</p> <p>17 MR. SHELOWITZ: Objection.</p> <p>18 Asked and answered.</p> <p>19 MR. KORIK: No, it hasn't</p> <p>20 been asked and answered. So,</p> <p>21 I would like you to answer that</p> <p>22 question.</p> <p>23 THE WITNESS: Several.</p> <p>24 I don't know the exact number.</p> <p>25 I could count them. There are</p>
<p style="text-align: right;">[22]</p> <p>1 Jason Pascal</p> <p>2 assets to retailers so that they can distribute.</p> <p>3 Q. Was The Orchard, at any one point, a</p> <p>4 retailer?</p> <p>5 A. Never.</p> <p>6 Actually, can I add to that?</p> <p>7 There may have been a point very</p> <p>8 early on in the company's history where you may</p> <p>9 have been able to buy CDs from a website called</p> <p>10 "theorchard.com." I have no knowledge of</p> <p>11 whether that did or didn't happen. So, to say</p> <p>12 never might not be accurate. I'm pretty sure</p> <p>13 The Orchard was never a retailer.</p> <p>14 Q. Okay. Now, The Orchard, you said,</p> <p>15 is a wholesale content distributor. In what</p> <p>16 forms is that content sold?</p> <p>17 A. Both, digital and physical forms,</p> <p>18 depending upon the rights that we receive.</p> <p>19 Q. And now, when you say digital, what</p> <p>20 form of digital media?</p> <p>21 A. MP3s.</p> <p>22 Q. Any others?</p> <p>23 A. That's one of them. There are</p> <p>24 hundreds. Mobile companies have hundreds of</p> <p>25 different formats and Internet stores use many</p>	<p style="text-align: right;">[24]</p> <p>1 Jason Pascal</p> <p>2 several.</p> <p>3 Q. Aside from a CD ring tone and MP3</p> <p>4 and the various format types of MP3s, what other</p> <p>5 forms does Media Right sell?</p> <p>6 A. I'm not here for Media Right.</p> <p>7 Q. What other forms does The Orchard</p> <p>8 sell, distribute?</p> <p>9 A. Ring tones, streams, ringbacks. A</p> <p>10 ringback is when a caller calls you and instead</p> <p>11 of hearing ring-ring, they hear a song. That's</p> <p>12 a ringback. CDs, but very very very</p> <p>13 infrequently. We don't, generally, have those</p> <p>14 rights. Permanent downloads via mobile via the</p> <p>15 Internet.</p> <p>16 That's several of them. I don't</p> <p>17 know that that's a complete list. There may be</p> <p>18 others that if I thought it through.</p> <p>19 Q. Okay. Now, if a company -- Well,</p> <p>20 let me give you a concrete example.</p> <p>21 MR. KORIK: Can you direct</p> <p>22 the witness to look at Orchard-5.</p> <p>23 Q. What you're looking at is a screen</p> <p>24 shot from the Rhapsody for Songs For Cats.</p> <p>25 Now, the record label listed here is</p>

<p style="text-align: right;">[25]</p> <p>1 Jason Pascal</p> <p>2 The Orchard. Was The Orchard in the record</p> <p>3 label for this product?</p> <p>4 A. I don't know.</p> <p>5 Q. Was The Orchard ever a record label?</p> <p>6 A. No.</p> <p>7 Q. Well, how did The Orchard come to be</p> <p>8 the record label for Songs For Cats in this</p> <p>9 particular document?</p> <p>10 A. I don't know the form.</p> <p>11 MR. SHELOWITZ: Objection.</p> <p>12 Q. Approximately, how many artists does</p> <p>13 The Orchard represent?</p> <p>14 A. It's a huge number. I don't know</p> <p>15 how many artists. It's a gigantic number.</p> <p>16 Q. 10,000?</p> <p>17 A. Many many more.</p> <p>18 Q. 500,000?</p> <p>19 A. We have the rights to over a million</p> <p>20 tracks. I don't know how many artists that is.</p> <p>21 Q. Okay. Approximately, how many</p> <p>22 labels?</p> <p>23 MR. SHELOWITZ: Objection</p> <p>24 to the form.</p> <p>25 THE WITNESS: I really</p>	<p style="text-align: right;">[27]</p> <p>1 Jason Pascal</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. I would like to show you Orchard-6.</p> <p>5 Is this a recent Orchard Digital and CD</p> <p>6 Distribution Agreement?</p> <p>7 MR. SHELOWITZ: Objection</p> <p>8 to the form.</p> <p>9 Q. How old is this Digital and CD</p> <p>10 Distribution Agreement?</p> <p>11 MR. SHELOWITZ: Objection</p> <p>12 to the form.</p> <p>13 Q. Is this Digital and CD Distribution</p> <p>14 Agreement still valid?</p> <p>15 MR. SHELOWITZ: Objection</p> <p>16 to the form.</p> <p>17 Q. Is this an Agreement that</p> <p>18 The Orchard still uses?</p> <p>19 MR. SHELOWITZ: Objection</p> <p>20 to the form.</p> <p>21 MR. KORIK: Okay.</p> <p>22 MR. SHELOWITZ: How about</p> <p>23 asking if this is something</p> <p>24 The Orchard ever used? Like</p> <p>25 can he identify it? Has he</p>
<p style="text-align: right;">[26]</p> <p>1 Jason Pascal</p> <p>2 don't know.</p> <p>3 MR. SHELOWITZ: He will</p> <p>4 ask you a question.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MR. SHELOWITZ: Just pause if</p> <p>7 I have an objection.</p> <p>8 THE WITNESS: Okay.</p> <p>9 Q. Approximately, how many labels does</p> <p>10 The Orchard represent?</p> <p>11 A. I don't know.</p> <p>12 Q. Since 1999-2000, have the digital</p> <p>13 stores through which The Orchard sells its</p> <p>14 media, have those changed?</p> <p>15 MR. SHELOWITZ: Objection.</p> <p>16 If you can pick one, either</p> <p>17 1999 or 2000?</p> <p>18 MR. KORIK: 1999?</p> <p>19 THE WITNESS: They've grown.</p> <p>20 There are more now than there</p> <p>21 were then.</p> <p>22 Q. Okay. Do you have a copy of The</p> <p>23 Orchard agreement that it would sign with record</p> <p>24 labels or musicians or artists circa 1999-2000?</p> <p>25 A. Do I have it with me?</p>	<p style="text-align: right;">[28]</p> <p>1 Jason Pascal</p> <p>2 ever seen it before?</p> <p>3 Q. Can you identify this document?</p> <p>4 A. I've never seen this particular</p> <p>5 document before.</p> <p>6 * MR. KORIK: Okay. I would</p> <p>7 like to make a request for a</p> <p>8 Digital CD Distribution Orchard</p> <p>9 Agreement that you use, if you've</p> <p>10 never seen this one, and this one</p> <p>11 came from your website, actually,</p> <p>12 but I would like to make a</p> <p>13 document demand for one.</p> <p>14 MR. SHELOWITZ: Okay. We'll</p> <p>15 take it under advisement.</p> <p>16 Q. Have you seen a copy of the</p> <p>17 Agreement between Media Right and The Orchard?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you have a copy of that</p> <p>20 Agreement with you?</p> <p>21 A. No.</p> <p>22 MR. KORIK: Can you show</p> <p>23 the witness Orchard-2?</p> <p>24 Q. Can you please identify what this</p> <p>25 document is?</p>

<p style="text-align: right;">[29]</p> <p>1 Jason Pascal</p> <p>2 A. This is a statement of the terms and</p> <p>3 conditions between an Orchard client, an Orchard</p> <p>4 content provider, and The Orchard.</p> <p>5 Q. Okay. Now, when would this document</p> <p>6 be sent to an Orchard client?</p> <p>7 MR. SHELOWITZ: Objection</p> <p>8 to the form.</p> <p>9 Q. Would this document be sent to an</p> <p>10 Orchard client?</p> <p>11 A. When?</p> <p>12 Q. I'm asking you that.</p> <p>13 A. When? I mean when do you mean? Our</p> <p>14 procedures have changed over the years.</p> <p>15 Q. Oh. In 2000?</p> <p>16 A. I didn't work there in 2000.</p> <p>17 Q. Are you familiar with how it would</p> <p>18 have been done in 2000?</p> <p>19 A. No.</p> <p>20 Q. Is there a witness that you can</p> <p>21 provide that is familiar with the procedures of</p> <p>22 The Orchard from 1999 or 2000?</p> <p>23 A. No.</p> <p>24 Q. Now, when would The Orchard send out</p> <p>25 this document?</p>	<p style="text-align: right;">[31]</p> <p>1 Jason Pascal</p> <p>2 document?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay.</p> <p>5 A. It's possible, but it's, also, not</p> <p>6 possible.</p> <p>7 Q. Does The Orchard have in its</p> <p>8 possession a signed Agreement between Media</p> <p>9 Right and The Orchard?</p> <p>10 A. I believe so.</p> <p>11 MR. KORIK: I would like</p> <p>12 to see that document.</p> <p>13 MR. SHELOWITZ: We've</p> <p>14 produced everything --</p> <p>15 THE WITNESS: You have it.</p> <p>16 MR. SHELOWITZ: -- there</p> <p>17 is. There's a letter.</p> <p>18 MR. KORIK: He just said</p> <p>19 there's a document you have?</p> <p>20 THE WITNESS: That's the</p> <p>21 document.</p> <p>22 MR. SHELOWITZ: That's the</p> <p>23 document. You didn't ask if</p> <p>24 that's the one you marked as an</p> <p>25 exhibit. Why don't you ask if</p>
<p style="text-align: right;">[30]</p> <p>1 Jason Pascal</p> <p>2 MR. SHELOWITZ: Objection</p> <p>3 to the form.</p> <p>4 Q. Now, would The Orchard send out this</p> <p>5 document to an Orchard client?</p> <p>6 A. It's not. No, it doesn't work that</p> <p>7 way.</p> <p>8 Q. Okay. Well, why don't you explain</p> <p>9 where this document would appear? How would an</p> <p>10 Orchard client obtain this document?</p> <p>11 A. It wouldn't. It's not done. We</p> <p>12 don't use this anymore. So, it's not done.</p> <p>13 Q. Okay. Are you familiar with when it</p> <p>14 would have been used?</p> <p>15 A. When it would have been used when?</p> <p>16 Q. Well, this particular document was</p> <p>17 produced by The Orchard. So, I'm assuming,</p> <p>18 since your company produced it, you could tell</p> <p>19 me when it would have been used?</p> <p>20 A. At some point in the contract</p> <p>21 process.</p> <p>22 Q. Okay.</p> <p>23 A. Before, during or after signing.</p> <p>24 Q. So, would The Orchard have obtained</p> <p>25 content from the client before sending this</p>	<p style="text-align: right;">[32]</p> <p>1 Jason Pascal</p> <p>2 this is the Agreement?</p> <p>3 Q. Is this document the Agreement</p> <p>4 between The Orchard and Media Right?</p> <p>5 MR. SHELOWITZ: He can't</p> <p>6 tell. There's a letter you marked.</p> <p>7 I can show you if you want. You</p> <p>8 marked it as Exhibit 7, a letter</p> <p>9 between Media Right and The Orchard.</p> <p>10 Why don't you ask him if this is</p> <p>11 the Agreement? Why don't you help</p> <p>12 him to help you? He wants to give</p> <p>13 you the right answer. You're not</p> <p>14 asking the questions.</p> <p>15 Q. Can you show him Orchard-7. Is</p> <p>16 Orchard-7 the Agreement between Media Right and</p> <p>17 The Orchard?</p> <p>18 A. It's a portion of the Agreement.</p> <p>19 Q. And where is the rest of the</p> <p>20 Agreement?</p> <p>21 A. It's Orchard - It looks to be</p> <p>22 Orchard-2.</p> <p>23 Q. So, between Orchard-2 and Orchard-7,</p> <p>24 this is the entire Agreement between Media Right</p> <p>25 and The Orchard?</p>



<p style="text-align: right;">[33]</p> <p>1 Jason Pascal</p> <p>2 A. I believe so.</p> <p>3 Q. There's no other provisions or any</p> <p>4 other content or terms between Media Right and</p> <p>5 The Orchard besides what is in this letter,</p> <p>6 Orchard-7 and Orchard-2, the Agreement?</p> <p>7 A. These documents are the Agreement.</p> <p>8 Q. Does The Orchard assure that the</p> <p>9 material that it distributes doesn't infringe on</p> <p>10 any pre-existing copyrights?</p> <p>11 MR. SHELOWITZ: Objection.</p> <p>12 Use of "assure" there.</p> <p>13 Q. How does The Orchard make sure that</p> <p>14 the material that it distributes is not</p> <p>15 infringing on anyone's copyright?</p> <p>16 A. You get a representation of that</p> <p>17 fact from the content provider.</p> <p>18 Q. Okay. And is that representation</p> <p>19 present in either Orchard-7 or Orchard-2?</p> <p>20 A. It looks to be.</p> <p>21 Q. Okay. And could you direct my</p> <p>22 attention to that?</p> <p>23 A. The last paragraph on Orchard-2.</p> <p>24 Q. On which page?</p> <p>25 A. On the first page of Orchard-2.</p>	<p style="text-align: right;">[35]</p> <p>1 Jason Pascal</p> <p>2 A. I don't know. I'm only there, three</p> <p>3 years.</p> <p>4 Q. Okay. Is this the procedure now --</p> <p>5 A. Procedure is different now. We</p> <p>6 don't use these documents anymore.</p> <p>7 Q. How is the procedure different now?</p> <p>8 MR. SHELOWITZ: He testified</p> <p>9 he wasn't there then. So, he</p> <p>10 doesn't know what the procedure</p> <p>11 is then. You can ask if he knows</p> <p>12 the procedure now, but can't</p> <p>13 compare because he said he</p> <p>14 wasn't there in 2000.</p> <p>15 Q. My question was: What is the</p> <p>16 procedure now?</p> <p>17 MR. SHELOWITZ: Okay.</p> <p>18 THE WITNESS: The documentation</p> <p>19 is different, the wording is</p> <p>20 different. If we feel a need to</p> <p>21 investigate beyond the warranty</p> <p>22 that we would obtain in the</p> <p>23 Agreement, then we do so.</p> <p>24 Q. But you're unaware of any obligation</p> <p>25 to investigate in 1999 or 2000?</p>
<p style="text-align: right;">[34]</p> <p>1 Jason Pascal</p> <p>2 Q. And could you read that first</p> <p>3 sentence into the record?</p> <p>4 MR. SHELOWITZ: I'm going</p> <p>5 to object. The document speaks</p> <p>6 for itself. He doesn't need to</p> <p>7 show you he can read English.</p> <p>8 It's right here. You can read it</p> <p>9 if you want.</p> <p>10 Q. So, other than representation from</p> <p>11 the content provider, The Orchard has no other</p> <p>12 safeguards or takes no other steps to verify</p> <p>13 that there is no infringement?</p> <p>14 MR. SHELOWITZ: Objection</p> <p>15 to the form.</p> <p>16 Q. Does The Orchard take any other</p> <p>17 steps to verify that there is no infringement</p> <p>18 other than to take the warranty and</p> <p>19 representation from the content provider that</p> <p>20 they have the right to grant to you these</p> <p>21 rights?</p> <p>22 A. That's our general procedure.</p> <p>23 Q. Was this the procedure in 1999?</p> <p>24 A. I don't know.</p> <p>25 Q. Was this the procedure in 2000?</p>	<p style="text-align: right;">[36]</p> <p>1 Jason Pascal</p> <p>2 A. I told you I didn't work there at</p> <p>3 that time.</p> <p>4 Q. Okay. Now, how do the recordings</p> <p>5 get to The Orchard? Either, digitally or a CD,</p> <p>6 how does it get to you so that you can</p> <p>7 distribute it, you being The Orchard?</p> <p>8 A. In some physical form which could be</p> <p>9 CD or some other fixed media or digitally.</p> <p>10 Q. When you say "digitally," does that</p> <p>11 mean somebody would send you a CD-ROM containing</p> <p>12 MP3s or would somebody E-mail you files as</p> <p>13 attachments?</p> <p>14 A. Those can be ways that we get them.</p> <p>15 We, also, get them via hard drive. We, also,</p> <p>16 get them via some sort of electronic transfer</p> <p>17 like FTP.</p> <p>18 Q. Now, are you aware of how Songs For</p> <p>19 Cats and Songs For Dogs went from physical media</p> <p>20 to digital media?</p> <p>21 A. I'm not aware of how it was done.</p> <p>22 Q. Now, Orchard-7, it's a letter</p> <p>23 directed to Sam Perlman. Who is Sam Perlman?</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. Is Sam Perlman employed at</p>

<p style="text-align: right;">[37]</p> <p>1 Jason Pascal</p> <p>2 The Orchard now?</p> <p>3 A. No.</p> <p>4 Q. Now, according to the letter, it</p> <p>5 reads, "The audio CD titles listed below will be</p> <p>6 distributed by The Orchard under the terms and</p> <p>7 conditions listed in your distribution</p> <p>8 agreement."</p> <p>9 Now, does that mean The Orchard was</p> <p>10 going to be distributing the audio CDs, the</p> <p>11 physical tangible discs?</p> <p>12 MR. SHELOWITZ: Objection</p> <p>13 The document speaks for itself.</p> <p>14 MR. KORIK: Okay.</p> <p>15 Q. So, where would The Orchard have</p> <p>16 distributed audio CD titles listed on Orchard-7?</p> <p>17 A. I don't understand the question.</p> <p>18 Q. Okay. Well, it says, the letter</p> <p>19 says that they will be distributed by</p> <p>20 The Orchard under the terms and conditions,</p> <p>21 okay, and I'm asking you: Where would</p> <p>22 The Orchard have distributed these audio CD</p> <p>23 titles pursuant to the terms of these</p> <p>24 agreements?</p> <p>25 A. They would be distributed pursuant</p>	<p style="text-align: right;">[39]</p> <p>1 Jason Pascal</p> <p>2 letter or a supplemental</p> <p>3 request.</p> <p>4 MR. KORIK: Sure.</p> <p>5 Q. Now, when the CDs were sent over to</p> <p>6 Sam Perlman, how did they go from CD to whatever</p> <p>7 format is sold by iTunes, Rhapsody or any of</p> <p>8 your other digital content providers?</p> <p>9 MR. SHELOWITZ: Objection.</p> <p>10 You're assuming a fact he</p> <p>11 has not testified to.</p> <p>12 MR. KORIK: The letter speaks</p> <p>13 for itself. Audio CD titles were</p> <p>14 distributed.</p> <p>15 So, at some point --</p> <p>16 MR. SHELOWITZ: Well, it says,</p> <p>17 if I read that, correctly, it says</p> <p>18 will be distributed. You just</p> <p>19 asked when Sam received CDs and</p> <p>20 you're assuming that he knows and</p> <p>21 it's him, actually, receives CD.</p> <p>22 There's a few assumptions in</p> <p>23 that question.</p> <p>24 Q. How would The Orchard have received</p> <p>25 these titles for distribution?</p>
<p style="text-align: right;">[38]</p> <p>1 Jason Pascal</p> <p>2 to the terms of the agreement.</p> <p>3 Q. Okay. And where?</p> <p>4 A. Through the distribution channels</p> <p>5 that The Orchard had at that time.</p> <p>6 Q. Okay. And what were the</p> <p>7 distribution channels for distributing audio CDs</p> <p>8 at that time?</p> <p>9 A. I don't have a list.</p> <p>10 * MR. KORIK: I would like a</p> <p>11 list.</p> <p>12 MR. SHELOWITZ: What do you</p> <p>13 mean you would like a list? You</p> <p>14 ask him a question.</p> <p>15 MR. KORIK: I would like to</p> <p>16 request a document from The</p> <p>17 Orchard listing all the channels</p> <p>18 on which audio CD titles as of</p> <p>19 February 1st, 2000 would have</p> <p>20 been distributed.</p> <p>21 MR. SHELOWITZ: Okay. We'll</p> <p>22 take it under advisement.</p> <p>23 All these requests, if you</p> <p>24 want to put them in a letter,</p> <p>25 we'll be happy to respond, a</p>	<p style="text-align: right;">[40]</p> <p>1 Jason Pascal</p> <p>2 A. What do you mean by how? By mail --</p> <p>3 Q. Okay.</p> <p>4 A. -- or hand-delivered.</p> <p>5 Q. So, did The Orchard receive these</p> <p>6 titles for distribution?</p> <p>7 A. I don't know.</p> <p>8 Q. Well, how did The Orchard come to</p> <p>9 distribute these titles?</p> <p>10 A. We must have received them, somehow.</p> <p>11 I don't know.</p> <p>12 Q. Okay. How do recordings get from a</p> <p>13 physical CD to an MP3?</p> <p>14 A. You want the operational answer, the</p> <p>15 technical answer?</p> <p>16 Q. Sure.</p> <p>17 A. The files on a CD are in a certain</p> <p>18 format. It's called "Red Book Audio." They are</p> <p>19 removed from the CD and converted into some</p> <p>20 other format.</p> <p>21 Q. Is this a process that is performed</p> <p>22 by The Orchard?</p> <p>23 A. Today?</p> <p>24 Q. Yes. Today?</p> <p>25 A. It is a process that's performed by</p>

[41]	[43]
<p>1 Jason Pascal</p> <p>2 The Orchard, today.</p> <p>3 Q. Is this a process that was performed</p> <p>4 by The Orchard in 1999 or 2000?</p> <p>5 A. I don't know.</p> <p>6 Q. How would Songs For Dogs and Songs</p> <p>7 For Cats be distributed by The Orchard in 1999</p> <p>8 or 2000?</p> <p>9 A. How would they have been</p> <p>10 distributed? I don't follow.</p> <p>11 Q. Would you have sold physical CDs,</p> <p>12 ring tones, MP3s or, through any of the other</p> <p>13 channels you testified earlier, how would you</p> <p>14 have distributed these two titles in 1999 or</p> <p>15 2000?</p> <p>16 A. Depends on the rights that we</p> <p>17 received.</p> <p>18 Q. Okay. And which rights did you</p> <p>19 receive?</p> <p>20 A. We received the rights in accordance</p> <p>21 with the document that you've shown me,</p> <p>22 Orchard-2, to sell, distribute - this is</p> <p>23 Paragraph 3 on the first page - to sell,</p> <p>24 distribute and otherwise exploit the recordings</p> <p>25 by any and all means and media, including</p>	<p>1 Jason Pascal</p> <p>2 Q. Okay. The cover art, also, appears</p> <p>3 on Orchard-5, Orchard-4 and Orchard-3. There's</p> <p>4 images of cover art, also, on other exhibits.</p> <p>5 MR. SHELOWITZ: What is it?</p> <p>6 3, 4 and 5?</p> <p>7 MR. KORIK: 3, 4, 5, and</p> <p>8 14, 13.</p> <p>9 MR. SHELOWITZ: Okay. Well,</p> <p>10 why don't you, when you address</p> <p>11 a specific one, we'll show him</p> <p>12 a specific one?</p> <p>13 MR. KORIK: I'm discussing</p> <p>14 cover art, in general.</p> <p>15 Q. How does that image get to your</p> <p>16 E-Stores or content resalers?</p> <p>17 A. Do you mean operationally or</p> <p>18 rights-wise?</p> <p>19 Q. Both. Let's start with</p> <p>20 operationally, first?</p> <p>21 A. How do these images, these specific</p> <p>22 images get there?</p> <p>23 Q. Cover art, in general?</p> <p>24 A. We deliver them.</p> <p>25 Q. Okay. And by what means do you</p>
[42]	[44]
<p>1 Jason Pascal</p> <p>2 without limitation, what it then goes on to say.</p> <p>3 Q. Okay. So, Paragraph 3 gave you the</p> <p>4 right to sell the recordings throughout</p> <p>5 E-stores, included, but not limited to, those</p> <p>6 via the Internet, as well as all digital</p> <p>7 storage, download and transmission rights,</p> <p>8 whether now known or existing in the future?</p> <p>9 Did that mean that, as of 1999-2000 when this</p> <p>10 Agreement went into effect, they could sell</p> <p>11 physical CDs?</p> <p>12 A. We had the rights to sell by any and</p> <p>13 all means and media.</p> <p>14 Q. And, as of 1999 and 2000, what were</p> <p>15 the known means and media that The Orchard sold</p> <p>16 Songs For Cats and Songs For Dogs through?</p> <p>17 A. We sold, at that time, physically,</p> <p>18 meaning CDs. I don't know that that we sold,</p> <p>19 digitally, yet, at that time. I don't know,</p> <p>20 exactly, when that began.</p> <p>21 Q. Okay. Now, we were discussing</p> <p>22 ripping the CDs, earlier. You didn't use the</p> <p>23 terminology "ripping." I'm using it now. Can</p> <p>24 we agree what you described was ripping a CD?</p> <p>25 A. Yes.</p>	<p>1 Jason Pascal</p> <p>2 deliver them?</p> <p>3 A. Same means as we deliver the</p> <p>4 recordings.</p> <p>5 Q. And by what means do you deliver the</p> <p>6 recordings?</p> <p>7 A. Electronic or physically.</p> <p>8 Q. Okay. How does the art go from a</p> <p>9 tangible product to a digital image, such as the</p> <p>10 ones in front of you?</p> <p>11 MR. SHELOWITZ: Objection</p> <p>12 to the form.</p> <p>13 Q. How is the art transferred to a</p> <p>14 digital file?</p> <p>15 MR. SHELOWITZ: Objection</p> <p>16 to the form. He's here as a</p> <p>17 fact witness for The Orchard.</p> <p>18 If you want to be specific --</p> <p>19 MR. KORIK: It's a process</p> <p>20 that The Orchard converts this</p> <p>21 and I'm trying to ask him about</p> <p>22 this process.</p> <p>23 MR. SHELOWITZ: Ask, but</p> <p>24 ask the question so that, you</p> <p>25 know, it's if he knows and,</p>

<p style="text-align: right;">[45]</p> <p>1 Jason Pascal</p> <p>2 you know, give him something</p> <p>3 because there's no foundation</p> <p>4 whatsoever in your question.</p> <p>5 Q. Do you know how this cover art</p> <p>6 becomes digitized or scanned or ripped?</p> <p>7 A. Generally, yes.</p> <p>8 Q. And how is that done?</p> <p>9 A. We do it. I don't know how else to</p> <p>10 tell it to you. I'm not in the Operations</p> <p>11 Department. So, we do it.</p> <p>12 Q. I'm not asking for anything</p> <p>13 technical. It's something that The Orchard</p> <p>14 does; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Now, is a digital copy a</p> <p>17 copy, in your opinion?</p> <p>18 MR. SHELOWITZ: Objection.</p> <p>19 MR. KORIK: It's pretty</p> <p>20 straightforward.</p> <p>21 Q. Is the digital copy the same as</p> <p>22 physical copy?</p> <p>23 A. I don't know in what context you're</p> <p>24 asking the question. You're asking me if a copy</p> <p>25 is a copy?</p>	<p style="text-align: right;">[47]</p> <p>1 Jason Pascal</p> <p>2 A. The day that we found out about this</p> <p>3 litigation.</p> <p>4 Q. And when did you begin distributing</p> <p>5 Songs For Dogs, Songs For Cats?</p> <p>6 A. I don't, exactly, know the date.</p> <p>7 Q. What services does The Orchard,</p> <p>8 currently, provide for Media Right Productions?</p> <p>9 A. Encoding and distribution and</p> <p>10 marketing, to some extent.</p> <p>11 Q. What is encoding?</p> <p>12 A. Encoding is the process of</p> <p>13 converting titles into digital forms such that</p> <p>14 they can be distributed through digital means.</p> <p>15 Q. Did The Orchard perform encoding for</p> <p>16 Songs For Dogs and Songs For Cats?</p> <p>17 A. I don't know.</p> <p>18 Q. But you do it for Media Right now?</p> <p>19 A. When he delivers -- When Media Right</p> <p>20 delivers new recordings to us, yes.</p> <p>21 Q. Do you know what products The</p> <p>22 Orchard distributed for Media Right?</p> <p>23 A. When?</p> <p>24 Q. Going back to 1999 through today?</p> <p>25 A. It's a handful of titles. I</p>
<p style="text-align: right;">[46]</p> <p>1 Jason Pascal</p> <p>2 Q. Well, is a ripped CD stored on a</p> <p>3 hard drive the same as a physical tangible CD</p> <p>4 for purposes of a copy? Is a copy a copy, a</p> <p>5 digital copy versus a tangible copy?</p> <p>6 MR. SHELOWITZ: Objection</p> <p>7 to form. I don't know where</p> <p>8 you're going with this and I</p> <p>9 don't even understand what</p> <p>10 you're asking. I don't know</p> <p>11 how you could expect him to</p> <p>12 answer.</p> <p>13 Q. All right. Are you familiar with</p> <p>14 Media Right Productions?</p> <p>15 A. Yes.</p> <p>16 Q. Do you still distribute Media Right</p> <p>17 Productions?</p> <p>18 A. We still distribute some recordings</p> <p>19 that they've provided to us, yes.</p> <p>20 Q. Do you distribute Songs For Dogs or</p> <p>21 Songs For Cats?</p> <p>22 A. Not to my knowledge. No, not</p> <p>23 anymore.</p> <p>24 Q. Okay. And when did you cease</p> <p>25 distributing Songs For Dogs and Songs For Cats?</p>	<p style="text-align: right;">[48]</p> <p>1 Jason Pascal</p> <p>2 remember seeing a list of 10, maybe, CDs. I</p> <p>3 don't know the exact number of how many full</p> <p>4 albums we distributed.</p> <p>5 Q. Okay. And where did you distribute</p> <p>6 these?</p> <p>7 A. Through our distribution channels.</p> <p>8 Q. All your distribution channels?</p> <p>9 Select distribution channels?</p> <p>10 A. It would have been subject to</p> <p>11 whatever restrictions Media Right gave us. I</p> <p>12 don't know what, if any, restrictions Media</p> <p>13 Right gave us, but, certainly, it would be</p> <p>14 subject to those territorial and other</p> <p>15 restrictions.</p> <p>16 Q. Now, Orchard-2, the document we had</p> <p>17 referred to, earlier --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- we had read Paragraph 3.</p> <p>20 A. Yes.</p> <p>21 Q. Did that paragraph give any</p> <p>22 restrictions to how the product could be</p> <p>23 distributed?</p> <p>24 A. Can we take a second?</p> <p>25 MR. SHELOWITZ: Take a</p>



<p style="text-align: right;">[49]</p> <p>1 Jason Pascal</p> <p>2 break, please. Be back in a</p> <p>3 few minutes.</p> <p>4 (Recess taken.)</p> <p>5 MR. SHELOWITZ: Okay.</p> <p>6 Maybe, you want to reread the</p> <p>7 question?</p> <p>8 MR. KORIK: I would, also,</p> <p>9 like to note for the record that</p> <p>10 the witness left in the middle</p> <p>11 of an open question to discuss it</p> <p>12 with his attorney.</p> <p>13 Can you repeat the question,</p> <p>14 please.</p> <p>15 (Last question read.)</p> <p>16 MR. SHELOWITZ: One note,</p> <p>17 I would like to just put on the</p> <p>18 record that, as Mr. Pascal's</p> <p>19 company counsel, that, when</p> <p>20 you're asking him to look at</p> <p>21 and identify certain provisions</p> <p>22 of a legal agreement that speak</p> <p>23 for themselves, I think we have</p> <p>24 to be very careful because he</p> <p>25 can't, obviously, give you any</p>	<p style="text-align: right;">[51]</p> <p>1 Jason Pascal</p> <p>2 question and try --</p> <p>3 MR. KORIK: The question</p> <p>4 was very specific before you</p> <p>5 left to go and discuss your</p> <p>6 answer out in the hall. The</p> <p>7 question was open.</p> <p>8 MR. SHELOWITZ: Right.</p> <p>9 Well, there's nothing</p> <p>10 objectionable between attorney</p> <p>11 and client speaking and,</p> <p>12 certainly, not when we're</p> <p>13 dealing with the paramount</p> <p>14 issue of attorney-client</p> <p>15 privilege as it relates to</p> <p>16 The Orchard.</p> <p>17 So, if we deem that it's</p> <p>18 appropriate and necessary to</p> <p>19 do that in order to protect</p> <p>20 the privilege and the company,</p> <p>21 we, certainly, will do that.</p> <p>22 MR. KORIK: I'm not asking</p> <p>23 for anything privileged.</p> <p>24 MR. SHELOWITZ: If you</p> <p>25 feel you can answer this</p>
<p style="text-align: right;">[50]</p> <p>1 Jason Pascal</p> <p>2 kind of legal opinion and</p> <p>3 anything that you're asking him</p> <p>4 is really based upon a document</p> <p>5 that speaks for itself.</p> <p>6 So, I just want to note that</p> <p>7 we have to be very careful about</p> <p>8 where we tread.</p> <p>9 MR. KORIK: Okay. It's</p> <p>10 noted and I'm asking him for his</p> <p>11 opinion, not legal advice.</p> <p>12 MR. SHELOWITZ: And you're</p> <p>13 asking him his opinion or what</p> <p>14 something says?</p> <p>15 MR. KORIK: I want him to</p> <p>16 read it, I want him to</p> <p>17 understand it and then I want</p> <p>18 him to, in his own words,</p> <p>19 explain if that paragraph gives</p> <p>20 any restrictions.</p> <p>21 MR. SHELOWITZ: Let me</p> <p>22 object to that on the basis</p> <p>23 that the document speaks for</p> <p>24 itself. If you want to be</p> <p>25 more specific with the</p>	<p style="text-align: right;">[52]</p> <p>1 Jason Pascal</p> <p>2 question without giving a legal</p> <p>3 opinion, if you want to look at</p> <p>4 a document, this speaks for</p> <p>5 itself, and answer his question,</p> <p>6 you can. If you feel that it's</p> <p>7 treading too close, we'll say</p> <p>8 that.</p> <p>9 MR. KORIK: I would like you</p> <p>10 not to answer the question for</p> <p>11 him.</p> <p>12 MR. SHELOWITZ: I'm not</p> <p>13 answering the question.</p> <p>14 THE WITNESS: Do you want</p> <p>15 me to read the paragraph?</p> <p>16 MR. KORIK: No. We've read</p> <p>17 the paragraph, earlier.</p> <p>18 Q. I'm asking for your opinion whether</p> <p>19 that paragraph gives any restrictions?</p> <p>20 A. Whether it gives restrictions?</p> <p>21 Q. Do you want us to reread the</p> <p>22 question?</p> <p>23 A. No. I want you to ask me a question</p> <p>24 that I understand.</p> <p>25 Q. I'm sorry. I don't remember the</p>

<p style="text-align: right;">[53]</p> <p>1 Jason Pascal</p> <p>2 exact wording of the question. Earlier, we were</p> <p>3 discussing whether the products distributed by</p> <p>4 The Orchard would have been distributed -- I</p> <p>5 asked where they would have been distributed.</p> <p>6 You said they would have been distributed</p> <p>7 wherever there are agreements pursuant to</p> <p>8 certain restrictions. I said, well, what are</p> <p>9 those restrictions? And that's where we are,</p> <p>10 today, right now.</p> <p>11 A. Yes, it gives us some restriction.</p> <p>12 Q. Okay. And what are those</p> <p>13 restrictions?</p> <p>14 A. The restrictions are that we don't</p> <p>15 have the rights to sell, separately, for value,</p> <p>16 anything other than the recordings.</p> <p>17 Q. Okay. Now, when you say</p> <p>18 "separately, for value, anything other than the</p> <p>19 recordings," can you give me an example of</p> <p>20 something that's separate?</p> <p>21 MR. SHELOWITZ: Objection</p> <p>22 to the form of the question.</p> <p>23 Q. Can you give me an example of what</p> <p>24 you mean? What this restricts you from doing?</p> <p>25 MR. SHELOWITZ: Well,</p>	<p style="text-align: right;">[55]</p> <p>1 Jason Pascal</p> <p>2 A. What it means is that we can't use,</p> <p>3 for instance, an artist's name as an endorsement</p> <p>4 or imply that that artist endorsed a product.</p> <p>5 For instance, we can't say this particular</p> <p>6 artist endorses this brand of laundry detergent.</p> <p>7 That's what it means. We can sell the</p> <p>8 recordings and use the associated data that goes</p> <p>9 along with them and it, clearly, says we can do</p> <p>10 that in exchange for value.</p> <p>11 Q. Okay. Now, this data, where does</p> <p>12 The Orchard obtain this data?</p> <p>13 A. What data?</p> <p>14 Q. You said you used this data. So,</p> <p>15 you explain to me what you mean by "this data"?</p> <p>16 A. Where do we obtain it?</p> <p>17 Q. Yeah.</p> <p>18 A. Where do we obtain the rights or,</p> <p>19 operationally, where do we obtain it?</p> <p>20 Q. What do you mean by data?</p> <p>21 A. "Name" -- I'm reading right from the</p> <p>22 Agreement. "Name, professional and/or group</p> <p>23 names, photographs and other images," et cetera,</p> <p>24 "biographical and/or other information" --</p> <p>25 Q. Okay. And where do you obtain the</p>
<p style="text-align: right;">[54]</p> <p>1 Jason Pascal</p> <p>2 what restricts him from doing?</p> <p>3 MR. KORIK: Paragraph 3.</p> <p>4 MR. SHELOWITZ: He just</p> <p>5 answered you.</p> <p>6 MR. KORIK: No. He said --</p> <p>7 He didn't answer that question.</p> <p>8 He said that there are</p> <p>9 restrictions, but he didn't</p> <p>10 specify what the restrictions</p> <p>11 are.</p> <p>12 MR. SHELOWITZ: He just --</p> <p>13 Did you want to repeat your</p> <p>14 answer?</p> <p>15 THE WITNESS: We can only</p> <p>16 sell the recordings for value.</p> <p>17 We can only get money for</p> <p>18 selling the recordings.</p> <p>19 Q. Okay. Well, does that mean, in</p> <p>20 other words, you cannot give the recordings away</p> <p>21 for free?</p> <p>22 A. No, that's not what it means.</p> <p>23 Q. Okay. In other words -- I don't</p> <p>24 understand what you're saying. So, I'm asking</p> <p>25 you to explain it to me?</p>	<p style="text-align: right;">[56]</p> <p>1 Jason Pascal</p> <p>2 names, the photographs, et cetera?</p> <p>3 MR. SHELOWITZ: Objection</p> <p>4 to the form.</p> <p>5 Q. How do you obtain this data? From</p> <p>6 whom?</p> <p>7 A. From our licensor.</p> <p>8 Q. How did you obtain the information</p> <p>9 for Songs For Dogs and Songs For Cats?</p> <p>10 A. From our licensor.</p> <p>11 Q. Okay. Looking at Orchard-4,</p> <p>12 Orchard-4, at the top there, it says "Media</p> <p>13 Right Productions." Do you see where it says</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. And below that is an image</p> <p>17 purporting to be Songs For Dogs?</p> <p>18 A. Yes.</p> <p>19 Q. Now, how did iTunes obtain the</p> <p>20 information in this listing?</p> <p>21 MR. SHELOWITZ: Objection.</p> <p>22 MR. KORIK: What's your</p> <p>23 objection?</p> <p>24 MR. SHELOWITZ: You're</p> <p>25 assuming that he knows how</p>

<p style="text-align: right;">[57]</p> <p>1 Jason Pascal</p> <p>2 iTunes got that and in this</p> <p>3 shot, which we don't know that,</p> <p>4 and so it's loaded with</p> <p>5 assumptions. There's no basis</p> <p>6 for the question.</p> <p>7 Q. Does The Orchard hold itself out as</p> <p>8 the record label for any of its artists?</p> <p>9 A. We have, on occasion, released</p> <p>10 records.</p> <p>11 Q. Okay. Did Media Right release Songs</p> <p>12 For Dogs or Songs For Cats?</p> <p>13 A. I don't know what Media Right did.</p> <p>14 MR. KORIK: Strike that.</p> <p>15 I misspoke.</p> <p>16 Q. I meant: Did The Orchard release</p> <p>17 Songs For Dogs or Songs For Cats?</p> <p>18 A. The Orchard did what The Orchard had</p> <p>19 the rights to do pursuant to its Agreement with</p> <p>20 Media Right.</p> <p>21 Q. That wasn't my question.</p> <p>22 My question was: Did The Orchard</p> <p>23 release, as a record label, Songs For Cats or</p> <p>24 Songs For Dogs?</p> <p>25 A. We did what we had the rights to do</p>	<p style="text-align: right;">[59]</p> <p>1 Jason Pascal</p> <p>2 Rhapsody obtain listing information for products</p> <p>3 distributed by The Orchard?</p> <p>4 A. They could get it any number of</p> <p>5 places.</p> <p>6 Q. Such as?</p> <p>7 A. Such as I don't know their</p> <p>8 business. I know that there are businesses that</p> <p>9 aggregate and provide data and I know that there</p> <p>10 are businesses that aggregate and provide</p> <p>11 content which is more than data. I don't know</p> <p>12 where they got it from.</p> <p>13 Q. Does The Orchard provide this data</p> <p>14 to any of its distributors -- resalers?</p> <p>15 A. What data?</p> <p>16 Q. Song titles? Song names? Artists'</p> <p>17 names?</p> <p>18 A. Photographs?</p> <p>19 Q. Et cetera?</p> <p>20 A. We do provide that data to many of</p> <p>21 our stores.</p> <p>22 Q. Can you give me some names of these</p> <p>23 stores, for example?</p> <p>24 A. iTunes.</p> <p>25 Q. Any others?</p>
<p style="text-align: right;">[58]</p> <p>1 Jason Pascal</p> <p>2 under the Agreement.</p> <p>3 Q. You're still --</p> <p>4 A. I feel I'm answering the question.</p> <p>5 Q. Did The Orchard act as a record</p> <p>6 label for Songs For Cats or Songs For Dogs?</p> <p>7 A. What do you mean by acting as a</p> <p>8 record label?</p> <p>9 Q. Enough such that Rhapsody or</p> <p>10 Orchard-5 would list the record label for Songs</p> <p>11 For Cats as The Orchard?</p> <p>12 A. I don't know what Rhapsody's</p> <p>13 practices are for listing data.</p> <p>14 Q. Okay. Well, where would Rhapsody</p> <p>15 obtain their data from?</p> <p>16 MR. SHELOWITZ: Objection.</p> <p>17 Q. Does The Orchard provide data to</p> <p>18 Rhapsody?</p> <p>19 A. Today, we do provide data to</p> <p>20 Rhapsody.</p> <p>21 Q. Okay. In five years ago, did you</p> <p>22 provide data to Rhapsody?</p> <p>23 A. I don't know the date of when our</p> <p>24 Rhapsody Agreement began.</p> <p>25 Q. Well, if you know, where would</p>	<p style="text-align: right;">[60]</p> <p>1 Jason Pascal</p> <p>2 A. Yes. Many others. We've been</p> <p>3 through this.</p> <p>4 Q. I'm asking, specifically, limited to</p> <p>5 this data?</p> <p>6 A. To this particular data, I don't</p> <p>7 know.</p> <p>8 Q. Okay. Did The Orchard ever sell</p> <p>9 physical CDs through Amazon?</p> <p>10 A. In its history?</p> <p>11 Q. Yes, in its history?</p> <p>12 A. Yes.</p> <p>13 Q. Does it still sell physical CDs</p> <p>14 through the Amazon?</p> <p>15 A. Through amazon.com?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. Did amazon.com sell Songs For Dogs</p> <p>19 and Songs For Cats as through The Orchard or</p> <p>20 distributed by The Orchard?</p> <p>21 A. I would have to look at the</p> <p>22 statements again.</p> <p>23 Q. Okay. Then you can look at</p> <p>24 Orchard-8 and Orchard-9. Those are statements</p> <p>25 provided by, I guess, The Orchard.</p>

<p style="text-align: right;">[61]</p> <p>1 Jason Pascal</p> <p>2 A. These statements indicate digital</p> <p>3 sales only. I don't know what the physical</p> <p>4 sales were.</p> <p>5 So, I can't tell you if Amazon,</p> <p>6 actually, sold any titles.</p> <p>7 Q. Okay. Is that information available</p> <p>8 somewhere?</p> <p>9 A. I don't know. It's old data.</p> <p>10 Management has changed, several times, at the</p> <p>11 company. So, I don't know if it's available.</p> <p>12 This is the data that we have.</p> <p>13 Q. Now, this data, it says inception to</p> <p>14 first quarter of '07; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What is the inception date?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, you provided me with data, but</p> <p>19 you don't know when it's from?</p> <p>20 A. I don't work in Finance.</p> <p>21 Q. Okay. Is this a total listing of</p> <p>22 all the stores that sold Songs For Dogs and</p> <p>23 Songs For Cats?</p> <p>24 A. Digitally, yes.</p> <p>25 Q. Would this include ring tones?</p>	<p style="text-align: right;">[63]</p> <p>1 Jason Pascal</p> <p>2 A. Paper statements?</p> <p>3 Q. Yes.</p> <p>4 A. Not for all clients. Some clients</p> <p>5 have on-line -- Well, all clients have on-line</p> <p>6 access, but we don't issue paper statements for</p> <p>7 every label or every content provider.</p> <p>8 Q. If you know, did Media Right receive</p> <p>9 paper statements?</p> <p>10 A. I don't know, but they would have</p> <p>11 full access to all of the data.</p> <p>12 Q. And where would that access be?</p> <p>13 A. Through our on-line</p> <p>14 password-protected space for Media Right and</p> <p>15 Media Right, alone.</p> <p>16 Q. Now, how is all that data tracked?</p> <p>17 A. What do you mean?</p> <p>18 Q. Okay. How is this data recorded to</p> <p>19 you? How do you know that, for instance, eMusic</p> <p>20 sold -- It says "Total Activity 23." So, what</p> <p>21 does that 23 reflect?</p> <p>22 A. .23 cents.</p> <p>23 MR. SHELOWITZ: Can you</p> <p>24 direct him to a specific</p> <p>25 exhibit?</p>
<p style="text-align: right;">[62]</p> <p>1 Jason Pascal</p> <p>2 Ringbacks?</p> <p>3 A. Yes. As far as I know, there were</p> <p>4 none of those products sold.</p> <p>5 Q. But this does not include physical</p> <p>6 sales?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Do you know who drafted Orchard-2,</p> <p>9 this document?</p> <p>10 A. No, I don't know.</p> <p>11 Q. How often would you pay Media Right</p> <p>12 Productions?</p> <p>13 A. Quarterly.</p> <p>14 Q. And would that be when they hit a</p> <p>15 certain minimum payment amount or just whatever</p> <p>16 the amount is sent?</p> <p>17 A. There are minimums.</p> <p>18 Q. Do you know what those minimums are?</p> <p>19 A. This Agreement says \$50.00.</p> <p>20 Q. Were statements provided along with</p> <p>21 the check to Media Right?</p> <p>22 A. I didn't issue them.</p> <p>23 Q. Okay. Is it The Orchard's practice</p> <p>24 to provide statements to clients with their</p> <p>25 royalty checks?</p>	<p style="text-align: right;">[64]</p> <p>1 Jason Pascal</p> <p>2 MR. KORIK: Orchard-9,</p> <p>3 the letter, we're looking for</p> <p>4 Songs for Dogs, eMusic, under</p> <p>5 Total Activity, there's a</p> <p>6 number 23.</p> <p>7 THE WITNESS: 23 is</p> <p>8 23 downloads.</p> <p>9 Q. And how do you know that it was only</p> <p>10 23 downloads and not 53 or 230 or 5 million?</p> <p>11 A. Because that's what they told us.</p> <p>12 Q. And you rely on the data that they</p> <p>13 provide to you?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How are promotional songs</p> <p>16 counted, such as free u-trial memberships and</p> <p>17 downloads and giveaways?</p> <p>18 A. Those practices are different on a</p> <p>19 retailer-by-retailer basis.</p> <p>20 Q. Are those reported to you as sales?</p> <p>21 A. By what retailer?</p> <p>22 Q. Let's go, line-by-line. eMusic?</p> <p>23 A. Yes.</p> <p>24 Q. iTunes Australia?</p> <p>25 A. They don't do that.</p>



<p style="text-align: right;">[65]</p> <p>1 Jason Pascal</p> <p>2 Q. iTunes Austria?</p> <p>3 A. iTunes, there are different business</p> <p>4 models. You're asking questions that are all</p> <p>5 over the map that can be answered in boxes that</p> <p>6 you --</p> <p>7 Q. I asked you for a simple answer.</p> <p>8 A. No, they don't do that.</p> <p>9 Q. MSN Music?</p> <p>10 A. They, maybe. There are different</p> <p>11 business models. There are portions of them</p> <p>12 that have that section of them as business model</p> <p>13 and I believe they report them to us.</p> <p>14 Q. Okay. Musicmatch?</p> <p>15 A. Musicmatch doesn't exist anymore as</p> <p>16 a stand-alone service. I've never seen their</p> <p>17 statements.</p> <p>18 Q. MusicNet?</p> <p>19 MR. SHELOWITZ: General?</p> <p>20 Just if you can restate</p> <p>21 the question rather than,</p> <p>22 simply, naming the names in</p> <p>23 this list, I think it would</p> <p>24 be helpful.</p> <p>25 Q. Are free trials and free downloads</p>	<p style="text-align: right;">[67]</p> <p>1 Jason Pascal</p> <p>2 A. Yes.</p> <p>3 Q. And what directed you to answer yes?</p> <p>4 What did you look at that gave you that answer?</p> <p>5 A. I looked at the column that said</p> <p>6 "S."</p> <p>7 Q. And, going column-by-column, what is</p> <p>8 DMS, the very first one?</p> <p>9 A. Digital Music Service.</p> <p>10 Q. And, going across, DT?</p> <p>11 A. Download Total.</p> <p>12 Q. DT\$?</p> <p>13 A. The dollar amount for each Download</p> <p>14 Total.</p> <p>15 Q. The next box, DA?</p> <p>16 A. DA, these are terms that Finance</p> <p>17 uses or Accounting uses in -- You know, it's</p> <p>18 their terminology. DA, I don't, exactly. I</p> <p>19 can't think of what it means.</p> <p>20 Q. Okay. S, we've established S\$ is</p> <p>21 revenue generated by streams?</p> <p>22 A. Yes.</p> <p>23 Q. DR?</p> <p>24 A. Download of ring tones.</p> <p>25 Q. Okay. And RB?</p>
<p style="text-align: right;">[66]</p> <p>1 Jason Pascal</p> <p>2 reported to you by these providers that we are</p> <p>3 listing? We are on MusicNet.</p> <p>4 MR. SHELOWITZ: Are they</p> <p>5 or the record of free download?</p> <p>6 MR. KORIK: A record of</p> <p>7 free download or the trial</p> <p>8 download?</p> <p>9 THE WITNESS: If they're</p> <p>10 doing them, I believe they do</p> <p>11 report them to us.</p> <p>12 Q. And the same holds true for MusicNet</p> <p>13 Canada?</p> <p>14 A. I don't know for sure. Yes, they</p> <p>15 do.</p> <p>16 Q. Okay. And Music Now/Full Audio?</p> <p>17 A. I don't know what their model was.</p> <p>18 So, I don't know if they would have reported</p> <p>19 them to us. That's another company that no</p> <p>20 longer exists.</p> <p>21 Q. And RealNetworks?</p> <p>22 A. RealNetworks would, also, report</p> <p>23 them to us.</p> <p>24 Q. Now, do these numbers reflect</p> <p>25 streams?</p>	<p style="text-align: right;">[68]</p> <p>1 Jason Pascal</p> <p>2 A. Ringbacks.</p> <p>3 Q. And TD?</p> <p>4 A. TD, I don't know what TD means.</p> <p>5 Q. Okay. Going back to Orchard-2, it's</p> <p>6 the Agreement, did that document allow a product</p> <p>7 given to you by Media Right to be severed, to be</p> <p>8 sold, track-by-track?</p> <p>9 MR. SHELOWITZ: Objection.</p> <p>10 The document speaks for itself.</p> <p>11 Q. Does The Orchard have a practice of</p> <p>12 selling records or recordings as complete</p> <p>13 downloads, meaning not track-by-track but you</p> <p>14 can only purchase them as a complete recording,</p> <p>15 all tracks, including all cover art?</p> <p>16 A. When we have the right to exploit --</p> <p>17 By to exploit any and all of the recordings by</p> <p>18 any and all means and media, yes.</p> <p>19 Q. You're answering my prior question</p> <p>20 with that?</p> <p>21 MR. SHELOWITZ: He's answering</p> <p>22 your current question. You can</p> <p>23 ask for a readback. He answered,</p> <p>24 exactly, what you asked.</p> <p>25 Q. Okay. So, Paragraph 3 allows</p>

<p style="text-align: right;">[69]</p> <p>1 Jason Pascal</p> <p>2 The Orchard to sell, track-by-track?</p> <p>3 MR. SHELOWITZ: Objection</p> <p>4 to form. The document speaks</p> <p>5 for itself.</p> <p>6 You have a legal document.</p> <p>7 Why are you asking a lawyer for</p> <p>8 an interpretation?</p> <p>9 MR. KORIK: You produced a</p> <p>10 lawyer.</p> <p>11 MR. SHELOWITZ: We produced</p> <p>12 a representative of the company</p> <p>13 and you have a document that</p> <p>14 speaks for itself.</p> <p>15 MR. KORIK: I'm not asking</p> <p>16 for a legal opinion. I'm asking</p> <p>17 for an interpretation.</p> <p>18 MR. SHELOWITZ: You have a</p> <p>19 document that says certain things.</p> <p>20 Q. Now, this document refers to "the</p> <p>21 Territory." You provide "throughout the</p> <p>22 Territory." What is "the Territory"?</p> <p>23 MR. SHELOWITZ: I'm just</p> <p>24 going to make the same</p> <p>25 objection. This is a document</p>	<p style="text-align: right;">[71]</p> <p>1 Jason Pascal</p> <p>2 A. On the master side or on the</p> <p>3 composition side?</p> <p>4 Q. Either one?</p> <p>5 A. Not on the composition side. Those</p> <p>6 aren't our rights to grant. We don't have the</p> <p>7 right to collect those royalties because we</p> <p>8 don't trade in compositions.</p> <p>9 On the master side, we collect them</p> <p>10 if we're given the rights to do so by the label.</p> <p>11 Q. Were you given the rights to do so</p> <p>12 in Songs For Dogs and Songs For Cats?</p> <p>13 A. We have the rights to distribute by</p> <p>14 any and all means and media now known or</p> <p>15 existing in the future.</p> <p>16 So, if there are performance</p> <p>17 royalties, we will try to collect them and they</p> <p>18 will be remitted as we receive them.</p> <p>19 Q. Are you aware if performance</p> <p>20 royalties were collected on behalf of Songs For</p> <p>21 Dogs and Songs For Cats?</p> <p>22 A. Do you mean on the master side or on</p> <p>23 the composition side?</p> <p>24 Q. Both?</p> <p>25 A. We never collect on the composition</p>
<p style="text-align: right;">[70]</p> <p>1 Jason Pascal</p> <p>2 that speaks for itself.</p> <p>3 MR. KORIK: The document</p> <p>4 doesn't define Territory.</p> <p>5 THE WITNESS: Yes, it does.</p> <p>6 If you read it, you would know.</p> <p>7 MR. KORIK: Feel better?</p> <p>8 MR. SHELOWITZ: I object to</p> <p>9 that.</p> <p>10 Q. Where does it say "Territory"?</p> <p>11 MR. SHELOWITZ: That was</p> <p>12 disrespectful to the witness.</p> <p>13 Q. Where is Territory defined?</p> <p>14 A. It's in the document.</p> <p>15 Q. Okay. I would like --</p> <p>16 A. It's on Page 2 of the document.</p> <p>17 Q. Can you read it?</p> <p>18 A. Yeah. Territory means the universe.</p> <p>19 Q. Okay. Thank you. That's what I was</p> <p>20 looking for.</p> <p>21 Does The Orchard collect performance</p> <p>22 royalties?</p> <p>23 A. What type of performance royalties</p> <p>24 do you mean?</p> <p>25 Q. For streaming?</p>	<p style="text-align: right;">[72]</p> <p>1 Jason Pascal</p> <p>2 side. It's not our purview.</p> <p>3 On the master side, I don't know if</p> <p>4 we've gotten anything.</p> <p>5 Q. And where would that information be</p> <p>6 available?</p> <p>7 A. From the society that administers</p> <p>8 those royalties. It's called "Sound Exchange."</p> <p>9 Q. And who would report this</p> <p>10 information to Sound Exchange? Would it be</p> <p>11 The Orchard?</p> <p>12 A. Which information?</p> <p>13 Q. The master royalties?</p> <p>14 A. It could be The Orchard or it could</p> <p>15 be the store.</p> <p>16 Q. Okay. Did anyone at The Orchard</p> <p>17 take the responsibility for the accuracy of the</p> <p>18 information contained on third-party stores?</p> <p>19 A. What information?</p> <p>20 Q. If a track listing was misspelled or</p> <p>21 an artist's name was misspelled, was there</p> <p>22 somebody at The Orchard that would oversee that?</p> <p>23 MR. SHELOWITZ: Objection.</p> <p>24 Misspelled where and in what</p> <p>25 context?</p>

[73]	[75]
<p>1 Jason Pascal</p> <p>2 Q. If Songs For Dogs was listed on</p> <p>3 iTunes as Songs Cats, missing the word "For,"</p> <p>4 would somebody at The Orchard correct it?</p> <p>5 A. Maybe.</p> <p>6 Q. Is there somebody at The Orchard</p> <p>7 that had that responsibility to oversee and</p> <p>8 track third-party resalers to make sure that all</p> <p>9 listings were correct?</p> <p>10 A. I don't know.</p> <p>11 Q. Does your answer change for 1999</p> <p>12 through 2000?</p> <p>13 A. I don't know. I didn't work there.</p> <p>14 Q. Okay. If a CD has a listing,</p> <p>15 specific listing, copyright, let's say, in 2000,</p> <p>16 how would -- Let's use a particular one, CD</p> <p>17 Songs For Dogs and Songs For Cats says copyright</p> <p>18 1996 slash 1997, Anne Bryant and Ellen Bernfeld,</p> <p>19 how did it become copyright The Orchard on</p> <p>20 iTunes?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you find that to be a problem</p> <p>23 that the iTunes is listing you as the copyright</p> <p>24 holder?</p> <p>25 MR. SHELOWITZ: Objection.</p>	<p>1 Jason Pascal</p> <p>2 of the Product Representation Agreement by Media</p> <p>3 Right when Media Right entered into the</p> <p>4 Agreement with The Orchard to distribute Songs</p> <p>5 For Dogs and Songs For Cats?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know if The Orchard keeps a</p> <p>8 file on -- a paper file on Media Right</p> <p>9 Productions?</p> <p>10 A. Yes.</p> <p>11 Q. Would you know if a copy of this</p> <p>12 Agreement is in that file?</p> <p>13 A. It is, currently, because of this</p> <p>14 litigation.</p> <p>15 Q. Prior to this litigation, was a copy</p> <p>16 of this?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. And where is this paper file</p> <p>19 maintained?</p> <p>20 A. In our office.</p> <p>21 Q. Is it in the Legal Department or</p> <p>22 somewhere else?</p> <p>23 A. It's not separated like that. We</p> <p>24 just have files in an office and they're Legal</p> <p>25 Department's files.</p>
[74]	[76]
<p>1 Jason Pascal</p> <p>2 Q. Earlier, you said that The Orchard</p> <p>3 was a record label and you released certain</p> <p>4 recordings. How many recordings did The Orchard</p> <p>5 release?</p> <p>6 A. The Orchard acts as record label, on</p> <p>7 occasion, and very very rare occasion. We've</p> <p>8 released, maybe, two records and those have been</p> <p>9 within the last year, year and a half.</p> <p>10 Q. And none of which were Songs For</p> <p>11 Dogs and Songs For Cats?</p> <p>12 A. No, they were not Songs For Dogs and</p> <p>13 Songs For Cats.</p> <p>14 Q. Okay. Were you ever shown a copy of</p> <p>15 the Product Representation Agreement?</p> <p>16 A. I've seen it.</p> <p>17 MR. KORIK: Okay. Can</p> <p>18 you show the witness Orchard-1.</p> <p>19 MR. SHELOWITZ: He doesn't</p> <p>20 have the exhibit yet.</p> <p>21 MR. KORIK: Oh.</p> <p>22 Q. Can you just take a moment to read</p> <p>23 it.</p> <p>24 A. Okay.</p> <p>25 Q. Was The Orchard provided with a copy</p>	<p>1 Jason Pascal</p> <p>2 Q. Was that file created, specifically,</p> <p>3 for the purposes of litigation or you had the</p> <p>4 file prior to litigation?</p> <p>5 A. We have a litigation file and then</p> <p>6 we have a contract file.</p> <p>7 Q. Okay. Reading this Agreement, does</p> <p>8 this Agreement grant Media Right Productions the</p> <p>9 right to grant those rights which we described</p> <p>10 in Paragraph 3?</p> <p>11 MR. SHELOWITZ: I'm going</p> <p>12 to object. This is a document</p> <p>13 that The Orchard is not a party</p> <p>14 to. The document speaks for</p> <p>15 itself. Mr. Pascal is here as</p> <p>16 a fact witness, not as a legal</p> <p>17 advisor or someone to interpret</p> <p>18 a contract between third party</p> <p>19 and your client.</p> <p>20 So, I think that's,</p> <p>21 completely, out of line and</p> <p>22 very objectionable.</p> <p>23 MR. KORIK: Okay.</p> <p>24 Can we direct the witness</p> <p>25 to look at Orchard-6.</p>

<p style="text-align: right;">[77]</p> <p>1 Jason Pascal</p> <p>2 Orchard-6 is an Agreement</p> <p>3 printed in The Orchard's website.</p> <p>4 MR. SHELOWITZ: When?</p> <p>5 MR. KORIK: I don't have the</p> <p>6 exact date written on it, but I</p> <p>7 don't, actually, know.</p> <p>8 MR. SHELOWITZ: Do you know</p> <p>9 who printed it out?</p> <p>10 MR. KORIK: Anne Bryant</p> <p>11 or Ellen Bernfeld. I'm pretty</p> <p>12 sure it's Anne Bryant.</p> <p>13 THE WITNESS: Okay.</p> <p>14 Q. I would like you to look at Page</p> <p>15 Number 3. Who would provide the answers to this</p> <p>16 information?</p> <p>17 A. The licensor.</p> <p>18 Q. Okay. Page 4, who would provide the</p> <p>19 answers to fill in that information?</p> <p>20 A. The licensor.</p> <p>21 Q. Who would select the wholesale</p> <p>22 price?</p> <p>23 A. The licensor.</p> <p>24 Q. Who would provide the name of the</p> <p>25 record label?</p>	<p style="text-align: right;">[79]</p> <p>1 Jason Pascal</p> <p>2 Media Right Productions. How did Media Right</p> <p>3 Productions become the artist on that CD?</p> <p>4 A. That must have been the data we were</p> <p>5 provided.</p> <p>6 Q. By whom?</p> <p>7 A. The licensor.</p> <p>8 Q. And. In this case, would the</p> <p>9 licensor be Media Right Production?</p> <p>10 A. The licensor would be Media Right</p> <p>11 Productions.</p> <p>12 Q. Okay. And where the label is listed</p> <p>13 as Media Right, would that information have been</p> <p>14 provided by Media Right Productions?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Orchard-14, under UPC, where</p> <p>17 would that UPC number come from?</p> <p>18 A. That's assigned by The Orchard.</p> <p>19 It's an Orchard UPC.</p> <p>20 Q. In what circumstances does</p> <p>21 The Orchard assign a UPC?</p> <p>22 A. In every circumstance.</p> <p>23 Q. Even if a product already has a UPC?</p> <p>24 A. We assign our own UPCs in addition</p> <p>25 so that we can track the recordings as they come</p>
<p style="text-align: right;">[78]</p> <p>1 Jason Pascal</p> <p>2 A. The licensor.</p> <p>3 Q. Page 5, Track Info, who would</p> <p>4 provide all of this, track details?</p> <p>5 A. The licensor.</p> <p>6 Q. Who would provide the ISRC number?</p> <p>7 A. The licensor.</p> <p>8 Q. And who would provide the</p> <p>9 performance rights information?</p> <p>10 A. The licensor.</p> <p>11 Q. And all of this data, what would</p> <p>12 The Orchard do with it once it was provided by</p> <p>13 the licensor?</p> <p>14 A. Compile it, aggregate it, distribute</p> <p>15 it along with the recordings.</p> <p>16 Q. And, when you say "distribute," who</p> <p>17 would it distribute to?</p> <p>18 A. To its retail partners.</p> <p>19 Q. Okay. So, Exhibit 13, 14, yeah,</p> <p>20 let's look at 13 and 14. There's a printout</p> <p>21 from The Orchard's website from August 25th,</p> <p>22 2005 and January 29th, 2007. Looking at</p> <p>23 Orchard-13, it's a listing for Songs For Dogs</p> <p>24 from The Orchard's website.</p> <p>25 Now, the artist here is listed as</p>	<p style="text-align: right;">[80]</p> <p>1 Jason Pascal</p> <p>2 in.</p> <p>3 Q. Are the recordings tracked for</p> <p>4 purposes of sales by the original UPC or</p> <p>5 The Orchard UPC?</p> <p>6 A. I believe, physically, they're</p> <p>7 tracked by the original UPC and, digitally, by</p> <p>8 ours.</p> <p>9 Q. And those sales, are they reported</p> <p>10 somewhere?</p> <p>11 A. Which sales?</p> <p>12 Q. Digital or physical?</p> <p>13 A. Are they reported somewhere? Yes.</p> <p>14 Q. To whom are they reported?</p> <p>15 A. They're reported to us.</p> <p>16 Q. Okay. Any other organizations?</p> <p>17 A. The retailers might notify</p> <p>18 performing right societies depending upon the</p> <p>19 area of business that they're in or they may</p> <p>20 not.</p> <p>21 Q. Okay. Who was responsible for</p> <p>22 securing and maintaining mechanical licenses for</p> <p>23 Songs For Dogs and Songs For Cats?</p> <p>24 A. The licensor.</p> <p>25 Q. In this case, that would be Media</p>



<p style="text-align: right;">[81]</p> <p>1 Jason Pascal</p> <p>2 Right Productions?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware if these licenses were</p> <p>5 obtained for Songs For Dogs and Songs For Cats?</p> <p>6 A. You would have to ask the licensor.</p> <p>7 Q. How is it that Mr. Shelowitz is</p> <p>8 representing The Orchard?</p> <p>9 A. In accordance with our arrangement</p> <p>10 with Media Right, Media Right indemnifies us for</p> <p>11 third-party claims and Mr. Shelowitz is Media</p> <p>12 Rights' attorney.</p> <p>13 Q. Are you aware of Plaintiffs'</p> <p>14 document production requests?</p> <p>15 A. My attorney is.</p> <p>16 Q. But are you? Did your attorney show</p> <p>17 them to you?</p> <p>18 A. I believe so.</p> <p>19 Q. Yes or no?</p> <p>20 A. I believe so.</p> <p>21 Q. So, you've looked at these</p> <p>22 documents?</p> <p>23 A. Yes, I've seen them.</p> <p>24 Q. And the documents you've provided to</p> <p>25 your attorney, I guess, previously, was</p>	<p style="text-align: right;">[83]</p> <p>1 Jason Pascal</p> <p>2 Q. Okay. And all the responses, all</p> <p>3 the documents that were produced, who gathered</p> <p>4 those?</p> <p>5 A. I gathered the documents that my</p> <p>6 attorney advised me to gather.</p> <p>7 Q. Okay. And were documents withheld</p> <p>8 on the grounds of privilege?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. So, everything that you had that was</p> <p>11 responsive to the demand was produced?</p> <p>12 A. I gathered the documents that my</p> <p>13 attorney advised me to gather.</p> <p>14 Q. Okay. And where were these</p> <p>15 documents maintained?</p> <p>16 A. The Orchard offices.</p> <p>17 Q. Okay. And is there somebody in</p> <p>18 charge of maintaining those records?</p> <p>19 A. Which records?</p> <p>20 Q. The records that we're discussing</p> <p>21 that you gathered?</p> <p>22 A. Well, what was gathered is in</p> <p>23 various different categories. So, there are</p> <p>24 people that are in charge of Finance documents,</p> <p>25 there are people in charge of Operations and the</p>
<p style="text-align: right;">[82]</p> <p>1 Jason Pascal</p> <p>2 Mr. Millman or Mitch here, those documents that</p> <p>3 you provided were responsive to those demands?</p> <p>4 MR. SHELOWITZ: Objection.</p> <p>5 You're getting very close to</p> <p>6 attorney-client privilege</p> <p>7 discussions. I don't know</p> <p>8 where you're going. If you want</p> <p>9 to have a specific question and</p> <p>10 if you want to show him a</p> <p>11 document request, if you want to</p> <p>12 have a specific question about a</p> <p>13 document, something unrelated to</p> <p>14 what we communicated with each</p> <p>15 other or he communicated with</p> <p>16 Mr. Millman, demands, please do</p> <p>17 that. Otherwise, I'm going to</p> <p>18 caution you.</p> <p>19 Q. Okay. Who showed you the document</p> <p>20 production request? Millman or Shelowitz?</p> <p>21 A. I don't know the exact dates. It</p> <p>22 depends on when you sent it because Millman was</p> <p>23 the attorney for a time --</p> <p>24 Q. Okay.</p> <p>25 A. -- and then it changed.</p>	<p style="text-align: right;">[84]</p> <p>1 Jason Pascal</p> <p>2 Distribution. So, they're not - they're not -</p> <p>3 litigation documents are not --</p> <p>4 Q. Okay.</p> <p>5 A. -- supervised by one person other</p> <p>6 than the Legal Department.</p> <p>7 Q. All right. Orchard-8, where does</p> <p>8 that information come from?</p> <p>9 A. The Accounting Department.</p> <p>10 Q. Would anybody else besides the</p> <p>11 Accounting Department have this information?</p> <p>12 A. There are other people that would</p> <p>13 have access to it because it's available,</p> <p>14 on-line. So, those that work in that area, the</p> <p>15 operation of our on-line systems, would be able</p> <p>16 to see it, but it's maintained by the Accounting</p> <p>17 Department.</p> <p>18 Q. What's your familiarity with</p> <p>19 Copyright Law?</p> <p>20 A. I'm familiar with Copyright Law.</p> <p>21 Q. Okay. Did you practice in the field</p> <p>22 of Copyright Law?</p> <p>23 A. I do practice in the field of</p> <p>24 Copyright Law.</p> <p>25 Q. And, prior to The Orchard, did you?</p>

<div> <div>[85]</div> <div> <div>1 Jason Pascal</div> <div>2 A. Yes.</div> <div>3 Q. Did you practice in that field?</div> <div>4 And are you aware that there must be</div> <div>5 a writing to transfer a copyright?</div> <div>6 MR. SHELOWITZ: Objection.</div> <div>7 This is a fact deposition,</div> <div>8 this is a fact witness and I</div> <div>9 don't know where you're going</div> <div>10 with this or what you want, but</div> <div>11 the law is what the law is and</div> <div>12 he's not here to testify about</div> <div>13 his understanding about Copyright</div> <div>14 Law. We have the books and cases</div> <div>15 and the Court for that.</div> <div>16 MR. KORIK: Okay. I don't</div> <div>17 have any further questions.</div> <div>18</div> <div>19</div> <div>20 Jason Pascal</div> <div>21 Sworn to before me this</div> <div>22 day of</div> <div>23 2008.</div> <div>24</div> <div>25 Notary Public</div> </div> </div>	<div> <div>[87]</div> <div> <div>1 Jason Pascal</div> <div>2 E X H I B I T S</div> <div>3 (Continued)</div> <div>4 Plaintiffs' Description Page</div> <div>5 Orchard-10 Three-page document entitled 6</div> <div>6 "The Orchard, digital stores"</div> <div>7 Orchard-11 One-page document entitled 6</div> <div>8 "The Orchard, cd stores"</div> <div>9 Orchard-12 Two-page document entitled 6</div> <div>10 "The Orchard, mobile partners"</div> <div>11 Orchard-13 Two-page document entitled 6</div> <div>12 "The Orchard, search results"</div> <div>13 Orchard-14 One-page document entitled 6</div> <div>14 "The Orchard, release info"</div> <div>15 * * *</div> <div>16 REQUEST FOR PRODUCTION</div> <div>17 Page Line Description</div> <div>18 28 6 Digital CD Distribution Orchard</div> <div>19 Agreement that the witness uses</div> <div>20 38 10 A document from The Orchard</div> <div>21 listing all the channels on</div> <div>22 which Audio CD titles as of</div> <div>23 February 1st, 2000 would have</div> <div>24 been distributed</div> <div>25</div> </div> </div>
<div> <div>[86]</div> <div> <div>1 Jason Pascal</div> <div>2 E X H I B I T S</div> <div>3 Plaintiffs' Description Page</div> <div>4 Orchard-1 Product Representation 4</div> <div>5 Agreement</div> <div>6 Orchard-2 Two-page fax dated 5/10/07 4</div> <div>7 Orchard-3 One-page iTunes screen shot 4</div> <div>8 regarding "Songs For Cats"</div> <div>9 Orchard-4 One-page iTunes screen shot 5</div> <div>10 regarding "Songs For Dogs"</div> <div>11 Orchard-5 One-page Rhapsody screen 5</div> <div>12 shot regarding "Listen Free 5</div> <div>13 Songs For Cats"</div> <div>14 Orchard-6 Ten-page document entitled 5</div> <div>15 "The Orchard, Digital &amp; CD</div> <div>16 Distribution"</div> <div>17 Orchard-7 One-page letter dated 2/1/00 5</div> <div>18 Orchard-8 Two-page document entitled 5</div> <div>19 "Songs For Cats - Inception</div> <div>20 to Q107 By Store"</div> <div>21 Orchard-9 Two-page document entitled 5</div> <div>22 "Songs For Dogs - Inception</div> <div>23 to Q107 By Store"</div> <div>24</div> <div>25</div> </div> </div>	<div> <div>C E R T I F I C A T I O N</div> <div> <div>I, Kathryn Lebeau, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:</div> <div> <div>That the witness whose examination is hereinbefore set forth was duly sworn by a Notary Public and that the transcript of examination is a true record of the testimony given by the said witness; and</div> <div>That I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.</div> </div> <div>Kathryn Lebeau</div> </div> </div>

<p><b>A</b></p> <p><b>able</b> 22:9 84:15</p> <p><b>absolutely</b> 15:24</p> <p><b>absorbed</b> 10:14 11:11</p> <p><b>access</b> 63:6,11,12 84:13</p> <p><b>Accounting</b> 67:17 84:9,11,16</p> <p><b>accuracy</b> 72:17</p> <p><b>accurate</b> 22:12</p> <p><b>act</b> 58:5</p> <p><b>acting</b> 58:7</p> <p><b>action</b> 88:15</p> <p><b>Activity</b> 63:20 64:5</p> <p><b>acts</b> 74:6</p> <p><b>add</b> 22:6</p> <p><b>addition</b> 79:24</p> <p><b>address</b> 4:13 7:5 43:10</p> <p><b>administer</b> 3:8</p> <p><b>administers</b> 72:7</p> <p><b>advice</b> 9:5 50:11</p> <p><b>advised</b> 83:6,13</p> <p><b>advisement</b> 28:15 38:22</p> <p><b>advisor</b> 76:17</p> <p><b>aggregate</b> 59:9,10 78:14</p> <p><b>ago</b> 58:21</p> <p><b>agree</b> 14:9 16:13 18:6 42:24</p> <p><b>AGREED</b> 3:3,12,16</p> <p><b>agreement</b> 4:20 26:23 27:6,10,14,17 28:9 28:17,20 31:8 32:2 32:3,11,16,18,20,24 33:6,7 35:23 37:8 38:2 42:10 49:22 55:22 57:19 58:2,24 62:19 68:6 74:15 75:2,4,12 76:7,8 77:2 86:5 87:19</p> 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